Aminah bte Mokhtar v Aman Cleaning Services Sdn Bhd

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO 24–1033 OF 1999
MOHD NOOR AHMAD J
3 DECEMBER 1999

Land Law — *Sale of land — Caveat — Agreement to sell terminated unlawfully — Caveat entered after such termination of agreement — Whether caveator had caveatable interest*

The applicant had agreed to buy the respondent's land. A 10% deposit was paid and the balance was to be paid in 90 days. An extension of 30 days was allowed provided interest at 8% per annum was paid. The applicant was granted an extension on 15 May on condition the applicant paid interest at 8% for the period from 22 April to 22 May and 10% interest from 22 May to 22 June. The applicant was also asked to pay a further RM200,000 for which a cheque was issued on 18 May. On 20 May, the respondent informed the applicant that the interest was to be paid before 22 May failing which the cheque would be returned, the deposit forfeited and the agreement terminated. The applicant asked for an extension of time until 26 May as a director of the applicant was in Penang and would only return on 22 May. On 25 May the respondent rejected the applicant's request, terminated the agreement and forfeited the deposit. On 26 May the applicant informed the respondent that it was willing and able to pay the balance of RM250,000 and interest but the respondent refused. The respondent demanded a further RM30,000 but the applicant refused. The applicant entered a caveat and the registrar of titles wrote to inform them that he would be removing the caveat. The applicant applied for the caveat to remain.

Held, allowing the application:

(1) The applicant being a purchaser was entitled to enter the caveat as the agreement to purchase vested him with a caveatable interest in the land (see p 469H).

(2) Although the caveat was entered after the respondent terminated the contract, the respondent had not lawfully terminated the contract. The respondent had granted an extension of time without categorically stating when interest was payable. Barely five days later, after the applicant had paid a further RM200,090 the respondent demanded the interest (see pp 469I–470C).

(3) The applicant thus was able to demonstrate a triable issue, ie whether the agreement had been lawfully terminated (see p 470H).

(4) If the landed property was disposed of before the determination of these issues, irreparable loss would result to the applicant. Furthermore the respondent was still holding the deposit (see p 470H – I).

(5) There was no inordinate delay as the applicant had made several attempts to persuade the respondent to complete the sale and the caveat was only entered thereafter (see p 471B–C).

[Bahasa Malaysia summary

Pemohon telah bersetuju untuk membeli tanah penentang. Deposit sebanyak 10% telah dibayar dan bakinya hendaklah dibayar dalam tempoh 90 hari. Perlanjutan masa selama 30 hari dibenarkan dengan syarat faedah pada kadar 8% setahun dibayar. Pemohon dibenarkan perlanjutan pada 15 Mei dengan syarat pemohon dibayar faedah pada kadar 8% untuk tempoh daripada 22 April hingga 22 Mei dan faedah sebanyak 10% daripada 22 Mei hingga 22 Jun. Pemohon juga diminta membuat bayaran lanjut sebanyak RM200,000 atas mana suatu cek telah dikeluarkan pada 18 Mei. Pada 20 Mei, penentang memaklumkan kepada pemohon bahawa faedah hendaklah dibayar sebelum 22 Mei yang mana kegagalan untuk berbuat demikian akan menyebabkan cek dikembalikan, deposit dilucuthakkan dan perjanjian tersebut ditamatkan. Pemohon telah memohon suatu perlanjutan masa sehingga 26 Mei kerana seorang pengarah pemohon berada di Pulau Pinang dan hanya akan kembali pada 22 Mei. Pada 25 Mei penentang menolak permintaan pemohon, menamatkan perjanjian tersebut dan melucuthakkan deposit tersebut. Pada 26 Mei, pemohon memaklumkan kepada penentang bahawa ia bersedia dan mampu membayar baki sebanyak RM250,000 dan faedah tetapi penentang telah menolaknya. Penentang selanjutnya menuntut RM30,000 tetapi pemohon menolak tuntutan itu. Pemohon memasukkan satu kaveat dan pendaftar hakmilik menulis kepada mereka untuk memaklumkan bahawa beliau akan membatalkan kaveat tersebut. Pemohon memohon supaya kaveat tersebut dikekalkan.

Diputuskan, membenarkan permohonan tersebut:

(1) Pemohon sebagai seorang pembeli berhak memasuki kaveat kerana perjanjian untuk membeli menganugerahkannya dengan kepentingan yang boleh dikaveatkan dalam tanah tersebut (lihat ms 469H).

(2) Walaupun kaveat tersebut dimasukkan selepas penentang menamatkan kontrak tersebut, penentang tidak menamatkan kontrak tersebut dengan sah. Penentang telah memberikan perlanjutan masa tanpa menyatakan secara mutlak bila faedah harus dibayar. Tidak cukup lima hari kemudiannya, selepas pemohon membuat bayaran lanjut sebanyak RM200,000 penentang telah menuntut faedah (lihat ms 469I–470C)

(3) Justeru itu pemohon dapat menunjukkan isu yang boleh dibicarakan, iaitu sama ada perjanjian tersebut telah ditamatkan dengan sahnya (lihat ms 470H).

(4) Sekiranya hartanah bermilik telah dilupuskan sebelum penentuan isu-isu ini, kerugian yang tidak dapat dipulihkan akan diakibatkan kepada pemohon. Tambahan pula, penentang masih memegang deposit (lihat ms 470H –I).

(5) Tiada kelewatan melampau kerana pemohon telah membuat beberapa percubaan untuk memujuk penentang supaya menyempurnakan perjanjian jualan dan kaveat tersebut hanya dimasukkan selepas itu (lihat ms 471B–C).]

Notes

For cases on caveat generally, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 2904–2916.

Cases referred to

Chia See Yin & Ors v Yeoh Kooi Imm [1996] 2 MLJ 494 (refd)
Megapillars Sdn Bhd v Loke Kwok Four [1996] 3 MLJ 7 (refd)
Murugappa Chettiar Lakshmanan v Lee Teck Mook [1995] 1 MLJ 782 (refd)

Legislation referred to

National Land Code 1965 s 323(1)
Rules of the High Court 1980 O 41 r 4

Syed Hussein Syed Nazimuddin (*Syed Hussien & Rakan-Rakan*) for the applicant.

S Mahendran (*TC Lim & Mahendran*) for the respondent.

Mohd Noor Ahmad J: The applicant seeks for her private caveat entered against a piece of land held under HS (D) 90455, No PT 1759 Mukim Damansara, Daerah Petaling, Selangor (hereinafter referred to as 'the land') to be extended until the disposal of the suit relating to the land.

(1) Under an agreement of 22 January 1999, the applicant purchased the land with a double-storey terraced house thereon for RM500,000. The applicant paid RM50,000 as deposit and as part payment towards the purchase price. The completion date was agreed to be 90 days from the date of the agreement with an extension of 30 days with interest at 8%pa on the balance of the purchase price. It was also stipulated that time was the essence of the agreement.

(2) On 15 May 1999, the applicant was granted an extension of time until 22 June 1999 to pay the balance of the purchase price provided the applicant was to pay interest at 8%pa from 22 April 1999 to 22 May 1999 and at 10%pa from 22 May 1999 to 22 June 1999 on the balance of the purchase price, and the applicant was asked to pay RM200,000 out of the balance of the purchase price, which the applicant did pay by cheque on 18 May 1999. However, on 20 May 1999, the applicant

was informed that the interest was to be paid before 22 May 1999, otherwise the cheque of RM200,000 would be returned, the deposit forfeited and the agreement would be terminated. The next day, the applicant asked for an extension of time to pay the interest until 26 May 1999 because one of its directors was away in Penang and would be back only on 22 May 1999. However, on 25 May 1999 the respondent rejected the request for extension of time to pay the interest, terminated the agreement and forfeited the deposit. On 26 May 1999, the applicant informed the respondent that it was willing to pay the balance of the purchase price of RM250,000 and the interest asked for by the respondent. But the respondent did not agree. On 28 May 1999, the applicant sent to the respondent the balance of the purchase price of RM250,000 and the interest, but as alleged, the respondent asked for an extra of RM30,000 to complete the sale which was refused by the applicant. Subsequently, the applicant filed a writ action against the respondent. On 9 June 1999, the applicant entered the impugned caveat. On 8 July 1999, the applicant was notified by the Registrar of Titles, Selangor that the caveat would be removed by 20 September 1999 in response to the respondent's application. Hence, the present application was made.

On the facts, I am satisfied that:

(a) the completion date was extended to 22 June 1999 provided that the applicant was to pay the interest on the balance of the purchase price for the extended completion period.

(b) the respondent terminated the agreement because (i) the applicant failed to pay before 22 May 1999 the interest for the extended completion period from 22 April 1999 to 22 May 1999 and (ii) the applicant took possession of the premises before the balance of the purchase price was paid in full.

(c) the caveat was lodged after the agreement was terminated.

It is trite law that in order to sustain a caveat, a caveator must first pass through three stages: (i) whether he has disclosed caveatable interest in his application under s 323(1) of the National Land Code 1965; (ii) if he has established a caveatable interest, then, whether the evidence produced in support of his claim discloses a serious question to be tried; and (iii) if both questions are resolved in the caveator's favour, then whether the balance of convenience or justice lies in favour of the caveat remaining on the register pending the disposal of his suit.

(See *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] MLJ 782).

(1) On stage (i), being the purchaser of the land under the agreement certainly the applicant has disclosed a caveatable interest in the land. No doubt that the caveat was lodged after the agreement was terminated and if the decision in *Chia See Yin & Ors v Yeoh Kooi Imm* [1996] 2 MLJ 494 is to be followed the applicant would have no

caveatable interest in the land. In that case, the court came to that conclusion because on the facts the court was satisfied that the agreement had been lawfully terminated by the plaintiffs. However, in the present case, at this juncture, I am not satisfied that the agreement had been lawfully terminated by the respondent on the following grounds

(i) On 15 May 1999, the respondent granted the applicant an extension of time until 22 June 1999 to pay the balance of the purchase price provided the applicant was to pay the interest as required without categorically stating when the interest was to be paid. Hence, time to pay the interest was at large. Even cl 3 of the agreement relating to the interest on the extension of time does not stipulate when that interest is to be paid. Barely five days later after the applicant had paid RM200,000 as requested, the respondent insisted that the interest from 22 April 1999 to 22 May 1999 had to be paid before 22 May 1999. Although time was the essence of the agreement which, in respect of payment of interest, had been at large and the respondent had again made time to pay the interest the essence of the agreement, the question is whether the time given to the applicant to pay the interest is reasonable having regard to the fact that the applicant had paid RM200,000 three days after the request and that the applicant's director was away in Penang? Furthermore, in view of the fact that the date of completion had already been extended to 22 June 1999, was it reasonable for the respondent to terminate the agreement not by reason of the failure of the applicant to pay the balance of the purchase price but of the failure to pay interest only?

(ii) Under cl 13 of the agreement vacant possession is to be given to the applicant upon the receipt of the balance of the purchase price by the respondent. However, the applicant took possession of the house before the balance of the purchase price was paid in order to carry out renovation works, as alleged, with the respondent's consent. On the contrary, the respondent contended that she did not deliver vacant possession to the applicant but the applicant took possession without her consent by obtaining the keys to the house from her estate agent who had no authority to hand over the keys to the applicant. In view of the conflicting facts the issue is whether the estate agent had the ostensible authority to hand over the keys to the applicant? This can be decided only at the trial of the main suit.

(2) For stage (ii), in the light of the above, I am satisfied that the applicant has demonstrated triable issues, in particular whether the agreement had been lawfully terminated.

(3) On stage (iii), as the subject matter is landed property which, if disposed of by the respondent before the final determination by the court of the issues raised, will result in an irreparable loss to the applicant and since the respondent is holding the deposit, I am satisfied that the balance of convenience or justice lies in favour of the caveat remaining on the register pending the disposal of the suit.

A The respondent contended that there was an inordinate delay on the part of the applicant in filing the writ action against the respondent because it was filed after the respondent applied to the Registrar of Titles for the caveat to be removed and that the applicant failed to explain the delay. It is true that the applicant does not disclose in the supporting affidavit, the date when the writ was filed and that information is not available from the record before B me. Be that as it may, to my mind, in view of what has been deposed in para ii of the supporting affidavit (encl (2)), the writ must have been filed before the saman pemula was filed on 13 August 1999. That being the case, the delay was less than three months from the date of the termination. To my mind, the delay was not inordinate considering that the applicant C subsequently made several attempts to persuade the respondent to complete the sale and that the caveat was entered thereafter. Therefore, the applicant need not explain such delay. The decision in *Megapillars Sdn Bhd v Loke Kwok Four* [1996] 3 MLJ 71 on timeous commencement of action is not followed because in that case the delay to file the action was some four years after the caveat was lodged.

D At the hearing, the respondent raised a preliminary objection on two issues which I rejected for lack of merit. The first issue is that the applicant failed to state the caveat presentation number in the intitulement. In my view, this is not a procedural defect because the subject matter of the proceeding can be sufficiently identified from the intitulement. Another E issue is that the supporting affidavit is defective because the jurat does not immediately follow the end of a substantive or spillover of the last substantive averment of the deposition. To my mind, due to the existence of the words 'Oleh yang demikian saya memohon perintah seperti yang dipohon dibenarkan oleh mahkamah yang mulia ini' on the same page as the jurat there is sufficient indication that the jurat relates directly to the F deposition. If I am wrong on this conclusion I exercised my discretion to grant leave for the affidavit to be used in the proceeding under O 41 r 4 of the Rules of the High Court 1980 since I am satisfied that the jurat relates to the deposition.

Therefore, an order in terms of the application is hereby made with cost to the applicant.

G *Order accordingly.*

Reported by Andrew Christopher Simon

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